***THE HON'BLE MS. JUSTICE G.ROHINI**

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+WRIT PETITION No.20587 OF 2004

%Dated 24-01-2005

Sarihaddu Ramya, W/o.Late Tenali Suresh,

R/o. Chrichinthala, Gudivada Mandal, Krishna District. **PETITIONER**

VERSUS

$ 1. Gudivada Rural Mandal Parishad, rep. by Mandal Parishad Development Officer, Gudivada.

2. The Deputy Election Authority-cum-RDO, Gudivada.

3. Gondru Nagaratnam, W/o.Srinivasulu, R/o.Chirichintala, Gudivada Mandal, Krishna District. **RESPONDENTS**

! Counsel for Petitioner: Mr. P. PRABHAKARA RAO

^Counsel for Respondents 1 & 2: Sri Srinivas Dammalapati, G.P. for Panchayat Raj & Rural Development.

^Counsel for the third respondent : Mr. P.Nageswara Sree

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> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20587 of 2004

Between:

Sarihaddu Ramya, W/o late Tenali Suresh,
R/o Chirichintala, Gudivada Mandal, Krishna District

..... PETITIONER

AND

1 Gudivada Rural Mandal Parishad, rep.by its Mandal Parishad Development Officer, Gudivada
2 The Deputy Election Authority-cum- R.D.O., Gudivada
3 Gondru Nagaratnam, W/o Srinivasulu,
R/o Chirichintala, Gudivada Mandal, Krishna District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or a writ more particularly one in the nature of Writ of Certiorari calling for the records relating and connected to O.P.No.83/2001 on the file of the Election Tribunal-cum-Senior Civil Judge, Gudivada and set aside the impugned order dated 14-10-2004 passed therein as the same is arbitrary, illegal, without jurisdiction and violative of Section 22 o the A.P. Panchayat Raj Act and Rule 3 of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules 1995, principles of natural justice and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner :MR. P.PRABHAKAR RAO

Counsel for the respondents 1 & 2 : SRINIVAS DAMMALAPATI G.P. for Panchayat Raj & rural Development.

Counsel for the Respondent No.3: MR. P.NASGESWARA SREE

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.20587 OF 2004

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ORAL ORDER :

The petitioner seeks a Writ of Certiorari calling for the records relating to the order dated 14-10-2004 in O.P.No.83 of 2001 on the file of the Election Tribunal-cum-Senior Civil Judge, Gudiwada and to quash the same being arbitrary, illegal and without jurisdiction.

The facts, which are not in dispute, are as under :

In the election held on 15-07-2001 for the Mandal Parishad Territorial Constituency (M.P.T.C.) of Serivelpur, the petitioner was elected as a Member of the said M.P.T.C. Later, she was also elected as President of Mandal Praja Parishad. The third respondent herein, who was an unsuccessful candidate, filed O.P.No.83 of 2001 on the file of the Election Tribunal-cum-Senior Civil Judge, Gudiwada, seeking a declaration that the writ petitioner was disqualified on the ground that she has not completed the age of 21 years on the date of filing of the nomination. The writ petitioner, who was arrayed as the first respondent in the O.P.No.83 of 2001, filed a counter denying the allegations. Both the parties let in oral and documentary evidence in support of their respective pleas. The Tribunal, on appreciation of the evidence on record, recorded a finding that the writ petitioner did not attain the age of 21 years as on the date of filing her nomination and therefore she was not qualified to contest the election and accordingly allowed O.P.No.83 of 2001. The said order dated 14-10-2004 is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner, the learned Government Pleader appearing for the respondents 1 and 2 and the learned Counsel appearing for the third respondent.

The learned Counsel for the petitioner at the outset submits that O.P.No.83 of

2001 which was filed beyond 30 days from the date of declaration of the result of the election is barred by limitation and therefore the same was liable to be dismissed in limine on that ground alone. He contends that even if it is taken as an application by a voter under Section 22 of the A.P. Panchayat Raj Act, 1994 seeking declaration as to the alleged disqualification suffered by the petitioner, the impugned order passed by the Senior Civil Judge, on the face of it, is without jurisdiction since under Section 22 of the Act the District Court alone is competent to adjudicate the question of disqualification.

It is to be noted that under Section 155 of the A.P. Panchayat Raj Act, 1994, (for short, 'the Act') no person shall be eligible for election as a Member of Mandal Parishad or a Member of Zilla Parishad unless he has completed the age of 21 years. Thus, undoubtedly, it is a disqualification and is a valid ground to question the election of the returned candidate. Section 233 of the Act states that no election held under the Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in that behalf. In exercise of the powers conferred by Sections 233 and 268(1) of the Act, the Governor of Andhra Pradesh made A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads & Zilla Parishads) Rules, 1995, (for short, 'the Rules') under G.O.Ms.No.111, P.R.R.D. & R (Elec.-III) Department, dated 3-3-1995. As per Rule 2(1) of the Rules, the Election Petition shall be presented to the Election Tribunal by any candidate or elector against the candidate who has been declared to have been duly elected. So far as the election disputes pertaining to elections to M.P.T.C. is concerned, Rule 2 (2) (i) (b) defines the Election Tribunal as the Subordinate Judge having territorial jurisdiction over the place in which the office of Mandal Parishad is located. Rule-3 mandates that such election petition shall be presented within 30 days from the date of the declaration of the result of the election. Rule 5 provides that at the time of presentation of the petition, the petitioner shall deposit with it in cash Rs.100/- as security.

It is also relevant to note that by virtue of sub-section (2) of Section 156 of the Act, Section 22 of the Act under which the District Court is constituted as the forum to adjudicate any matters relating to disqualifications is made applicable to a Member

of the Mandal Parishad subject to variations that for the expression Gram Panchayat, Executive Authority, Sarpanch, Upa-sarpanch, and District Panchayat Officer, the expressions Mandal Parishad, Mandal Parishad Development Officer, President, Vice-president & Chief Executive Authority shall respectively substituted. Section 22(1) of the Act, which is relevant for the purpose of the present case runs as under :

> ***Sec. 22. Authority to decide questions of disqualifications of members****:- (1) Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall,* ***within a period of two months*** *from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the* ***District Court*** *having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision. (****emphasis supplied****)*

A reading of sub-section (1) of Section 22 of the Act with necessary variations as specified under Section 156 (2) of the Act makes it clear that any voter or authority can make an allegation and submit the same in writing to the Mandal Parishad Development Officer that any person elected as a member of Mandal Parishad is not qualified or has become disqualified under the Act. The said Mandal Parishad Development Officer has to give intimation of such allegations to the Member through the Chief Executive Authority. On receipt of intimation, option is available to the member receiving such intimation of the allegations in case he disputes the correctness of the allegation to have the decision of the District Judge on such dispute. Such a right is also given to any other member to approach the District Judge for the decision as to the alleged disqualification. However, the member against whom the allegations are made or any other member on whom right is conferred under Section 22 of the Act to approach the District Court is required to make such application before the District Judge within a period of two months from the date of receipt of such intimation or entertaining such doubt as the case may be.

In the case on hand, admittedly, the third respondent has presented the petition in question before the Election Tribunal as defined under Rule 2 (2) (i) (b) duly complying with the requirement of Rule 5 as to the payment of the security deposit. Thus, obviously the petition is governed by the provisions of the Rules made under G.O.Ms.No.111, dated 3-3-1995. In the circumstances, I find force in the contention of the learned Counsel for the petitioner that the said petition which was presented on 31-08-2001 whereas the result of the election was declared on 15-7-2001, that is to say beyond 30 days from the date of declaration of the results was clearly barred by limitation provided under Rule 3 of the Rules and ought to have been dismissed in limine by the Tribunal below.

The learned Counsel for the third respondent though could not dispute the said conclusion, submits that since the relief sought in O.P.No.83 of 2001 was a declaration under Section 22 of the Act that the writ petitioner was disqualified on the ground of not completing the age of 21 years on the date of filing her nomination, the limitation of two months as provided under Section 22 of the Act applies. Thus, the learned Counsel contends that the Petition presented on 31-08-2001 within five weeks from the representation dated 28-7-2001 made to the Revenue Divisional Officer, Gudiwada who was the Deputy Election Authority complaining about the disqualification suffered by the petitioner, was well within the time and maintainable.

I am unable to agree with the contentions of the learned Counsel for the third respondent.

Section 22 of the Act and the Rules for election disputes made under G.O.Ms.No.111, dated 3-3-1995 in exercise of powers under Section 233 of the Act are intended to govern two different situations. Moreover, as noted above, whereas the forum specified for determination under Section 22 of the Act is the District Court, under the Rules the Election Tribunal as defined under Rule 2(2) alone is competent to adjudicate the election disputes. The scope and object of the said two provisions

as well as the procedure prescribed for invoking the two remedies provided thereunder are also entirely different. In the circumstances, even assuming that the Petition in question was presented for adjudication under Section 22 of the Act, undoubtedly the same cannot be maintained in the Election Tribunal constituted under Rule 2 of the Rules made under G.O.Ms.No.111, dated 3-3-1995.

It is true that the words “District Court” in Section 22 of the Act were substituted for the words “District Munsif” under the A.P. Panchayat Raj (Amendment) Act 22 of 2002 and thus by the date of the presentation of O.P.No.83 of 2001 on 31-08-2001 the District Munsif was competent to adjudicate upon the disqualification under Section 22 of the Act. The District Munsif has been defined under Section 2 (10) of the Act as the District Munsif appointed under the A.P. Civil Courts Act, 1972 and subsequently by virtue of amendment to A.P. Civil Courts Act, under Act 29 of 1997 the District Munsif has been re-designated as Junior Civil Judge. Thus, even prior to the amendment, it was the Junior Civil Judge having jurisdiction over the area in which the office of the Mandal Parishad is situated who was conferred with the power to adjudicate upon the alleged disqualification under Section 22 of the Act. Hence, under no circumstances the Court of Senior Civil Judge which was constituted as the Election Tribunal under Rule 2 of the Rules before whom the petition in question was presented by the third respondent can be held to be competent to adjudicate upon the alleged disqualification under Section 22 of the Act.

In the circumstances, even if the impugned order is taken as an adjudication under Section 22 of the Act, the same having been adjudicated by the Election Tribunal which is not conferred with such power under Section 22 of the Act, cannot be sustained being without jurisdiction.

I am also not persuaded with the objection raised by the learned Counsel for the third respondent that since the petitioner failed to raise any objection as to jurisdiction before the Tribunal below, it is not permissible for her to raise such a new plea for the first time before this Court.

The law is well settled that the plea with regard to initial want of jurisdiction in respect of an order passed by a Tribunal or a Subordinate Court, which goes to the root of the matter, being a pure question of law, can be permitted to be raised at any stage of the proceedings. The mere failure on the part of the opposite party to raise an objection as to want of jurisdiction cannot confer jurisdiction on a Tribunal or Court which lacks jurisdiction.

For the aforesaid reasons, the impugned order, being without jurisdiction, is liable to be quashed by issuing a Writ of Certiorari in exercise of jurisdiction under Article 226 of the Constitution of India.

In view of the above conclusion, it is not necessary to go into the correctness of the findings recorded by the Tribunal below as to the disqualification suffered by the petitioner.

Accordingly, the Writ Petition is allowed and the impugned order is set aside. No costs.

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24th January, 2005.

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To

1 The Mandal Parishad Development Officer, Gudivada Rural Mandal Parishad, Gudivada
2 The Deputy Election Authority-cum- Revenue Divisional Officer, Gudivada
3.2CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).

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